

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

In the Matter of)	
)	
Anthony Badeaux)	Complaint No. R9-2002-0191
Carlsbad Business Park LLC)	For
4275 Executive Square, Ste 240)	Administrative Civil Liability
La Jolla, CA 92037)	
_____)	

YOU ARE HEREBY GIVEN NOTICE THAT:

- 1) Carlsbad Business Park LLC is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), may impose liability under Section 13261 (a) and (b) of the California Water Code.
- 2) If Carlsbad Business Park LLC intends to waive its right to a public hearing before the Regional Board, an authorized agent must sign and return the enclosed waiver form with a cashier's check for the amount of \$2,145 by 5:00 P.M., Tuesday, August 20, 2002.
- 3) A public hearing on this matter has been scheduled at the Regional Board meeting on

**September 11, 2002,
at the Regional Board Meeting Room,
9174 Sky Park Court, Suite 100, San Diego, California.**

- 4) The meeting is scheduled to begin at 9:00 a.m. A copy of the agenda for the September meeting, which provides information pertaining to submittal of information and hearing procedures, will be sent to you under separate cover toward the end of August 2002.
- 5) At the hearing, Carlsbad Business Park LLC will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Board.
- 6) At the hearing, the Regional Board will determine the validity of the allegations contained herein, and if the allegations are found to be true, will consider whether or not to assess civil liability in the amount proposed by this complaint, or in some other amount. The Regional Board may refer the matter to the Attorney General for judicial assessment of civil liability (with higher maximum liabilities for each violation).

ALLEGATIONS

- 7) Carlsbad Business Park LLC is alleged to have violated Section 13260(d) of the California Water Code which requires that each person for whom waste discharge requirements have been prescribed pursuant to Water Code Section 13263 shall pay an annual fee according to a fee schedule established by the State Water Resources Control Board (State Board). The outstanding fees total \$500 for the facility located at Faraday Avenue in Carlsbad.
- 8) The following facts are the basis for the alleged violations in this matter:
- 9) Waste discharge requirements for discharges of storm water associated with construction activities have been issued to Carlsbad Business Park LLC and an annual storm water fee has been assessed accordingly. Carlsbad Business Park LLC was sent the following invoices:
 - a) Invoice No. 36868 for the amount of \$250 sent Oct. 5 and due Nov. 4, 2001 for Fiscal Year 2001 – 2002 (FY 2001)
 - i) First late notice sent on December 7, 2001
 - ii) Second late notice sent on January 22, 2002
 - b) Invoice No. 10189 for the amount of \$250 sent Oct. 29 and due Nov. 28, 1999 for Fiscal Year 1999 – 2000 (FY 1999)
 - i) First late notice sent on December 28, 1999
 - ii) Second late notice sent on January 31, 2000
- 10) The violation for non-payment is deemed to have occurred for a total of 1,245 days based on the following days:

Fiscal Year 2001-2002 from November 4, 2001 to July 31, 2002, or 269 days,
Fiscal Year 2000-2001 from November 28, 2000 to July 31, 2002, or 976 days.
- 11) State Board records indicate that Carlsbad Business Park LLC has failed to make payment in response to the invoices and notices.
- 12) On April 24, 2002, the Regional Board sent Carlsbad Business Park LLC a staff enforcement letter that noted the two outstanding annual fees and Carlsbad Business Park LLC that failure to pay required annual fees is a violation of provisions of the California Water Code and subject to Administrative Civil Liability Complaint assessing monetary penalties.

MAXIMUM ACL

- 13) Pursuant to Section 13261(b), the total maximum assessment for which Carlsbad Business Park LLC is civilly liable is \$1,245,000 (\$1,000 for each day of violation) for the violation cited above.

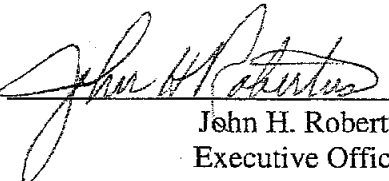
Pursuant to the State Water Resources Control Board's Water Quality Enforcement Policy, all ACLs that are not Mandatory Minimum Penalties should be assessed at a level that at a minimum recovers the economic benefit.

Therefore, the monetary liabilities should be calculated to negate any economic benefit realized by the discharger as a result of the violation. While the fees have remained outstanding, the discharger has continued to enjoy the privilege of discharging waste. During this time, other dischargers have paid the required fees. The discharger has gained an economic benefit in the amount of the fees (\$500) and interest (approximately \$91, assuming 10% per year) which might have accrued on that amount. Therefore, the proposed civil liability shall be within the range of \$591 and \$1,245,000.

PROPOSED CIVIL LIABILITY

- 14) The proposed amount of civil liability attributed to each violation was determined by taking into consideration the factors specified in Section 13367, economic savings, as well as the maximum civil liability that the Regional Board may assess. **Civil liability should be imposed on Carlsbad Business Park LLC by the Regional Board in the amount of \$2,145 for the violations cited above.**
- 15) The proposed complaint (\$2,145) is a separate amount and does not include the amount due (\$500) for payment of the delinquent annual storm water fees
- 16) The Regional Board costs for investigating this incident were approximately \$640.

Dated this 2nd day of August, 2002

By: 
John H. Robertus
Executive Officer